

2605

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA : 03 CR 01322(SJ)
-against- : U.S. Courthouse
: Brooklyn, New York

MOHAMMED ALI AL-MOAYAD
MOHAMMED MOHSEN ZAYED

Defendants :

March 7, 2005
9:30 a.m.

- - - - - X

BEFORE:

HONORABLE STERLING L. JOHNSON, JR.
United States District Judge
and a jury

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
MAR 11 2005

P.M. _____
TIME A.M. _____

APPEARANCES:

For the Government:

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HOWARD JACOBS, ESQUIRE
WILLIAM GOODMAN, ESQUIRE

U.S.A. v. AL-MOAYAD and ZAYED

2606

for the Defendant: JONATHAN MARKS, ESQUIRE
Mohammed Mohsen Zayed

Court Reporter: RONALD E. TOLKIN, RMR
Official Court Reporter
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Brooklyn, New York 11201

Minutes Taken Stenographically. Transcript Produced
By Computer Aided Transcription.

RONALD E. TOLKIN, RMR
OFFICIAL COURT REPORTER

1 (Time noted: 11:55 a.m.)

2 THE COURT: Let the record reflect that the Court
3 has received a note. This is U.S.A. versus Mohammed Ali
4 Hassan Al-Moayad.

5 It will be marked as Court Exhibit Number 8. We
6 would like the full testimony of both expert witnesses on
7 terrorism. Mr. Levitt, prosecution, and Mr. Henkel, defense.

8 Thank you.

9 Foreperson.

10 (Recess taken.)

11 (Matter continued on the next page.)

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1 THE COURT: Mr. Goodman, you wanted to say
2 something.

3 MR. GOODMAN: No, that is okay, your Honor.

4 THE COURT: Let the record reflect that I had
5 received a couple of notes. I read it into the record. I
6 called it Court Exhibit 8. It was really 9.

7 I'll read it again, and it's dated March 7th and it
8 says: We would like the full testimony of both expert
9 witnesses on terrorism, Mr. Levitt prosecution, Mr. Henkel
10 defense. Thank you. It says: Foreperson.

11 Then Court Exhibit 10 and 11 were transcripts.
12 And transcripts of what?

13 THE CLERK: The first one.

14 MR. MARKS: 10 was Levitt and --

15 THE CLERK: The second one, 11 was the transcript of
16 Henkel.

17 THE COURT: Basically, what it is, they asked for
18 the transcripts. We got the transcripts and sent it in.

19 10 was Levitt.

20 11 was Henkel.

21 We received another one which will be marked Court
22 Exhibit 12. It reads as follows: Was there a page 70 in the
23 pages the judge read to the jury? We don't have one.

24 I recall reading page 70 to the jury but I'll read
25 it to them again and I'll give it to them.

1 MR. GOODMAN: Your Honor, in that regard, we would
2 ask that the Court read, this is out of the conspiracy charge,
3 page 70, I believe, and rather than just isolating one bit of
4 that testimony even though they have asked for page 70, we
5 would ask if the Court is going to read the instruction to
6 them, that you read the entire conspiracy instruction.

7 MS. MOORE: The entire one or page 68 to 72?

8 THE COURT: 68 to 72.

9 MR. GOODMAN: That's what I meant.

10 MS. MOORE: No objection to that.

11 THE COURT: I don't think that it's necessary, but
12 I'll do it.

13 MR. GOODMAN: Thank you.

14 (Jury in at 2:50 p.m.)

15 THE COURT: Be seated, please. We're in a different
16 courtroom because I'm in a different courtroom with another
17 trial.

18 You get your money's worth out of me. These lawyers
19 work hard, too.

20 Let the record reflect that I have received a note.
21 It has been marked Court Exhibit 12.

22 It reads as follows: Was there a page 70 in the
23 pages the judge read to the jury? We don't have one. Thank
24 you. Foreperson.

25 Well, I recall reading 70 to you but what I am going

1 to do, I will give you 70 but I will out of an abundance of
2 caution, I'll read the whole conspiracy charge to you which is
3 on page 68 through 72.

4 The second element the government must prove beyond
5 a reasonable doubt in order to establish the offense of
6 conspiracy is that the defendant you are considering
7 knowingly, intentionally and voluntarily became a participant
8 in or member of the conspiracy.

9 If you are satisfied that the charged conspiracy
10 existed, you must next ask yourself who the members of the
11 conspiracy were.

12 In deciding whether the defendant was in fact a
13 member of the conspiracy, you should consider whether the
14 defendant knowingly and intentionally joined the conspiracy.
15 Did he participate in it with knowledge of its unlawful
16 purpose and with the specific intention of furthering its
17 business or objectives?

18 In that regard it has been said that in order for a
19 defendant to be deemed a participant in a conspiracy, he must
20 have had a stake in the venture or its outcome.

21 You're instructed that while proof of a financial
22 interest in the outcome of a scheme is not essential, if you
23 find that the defendant you are considering had such an
24 interest, that is a factor which you may properly consider in
25 determining whether or not that defendant was a member of the

1 conspiracy charged in the indictment.

2 As I mentioned moments ago, before a defendant can
3 be found to have been a conspirator, you must first find that
4 he knowingly joined in the unlawful agreement or plan. The
5 key question therefore is whether the defendant you are
6 considering joined the conspiracy with an awareness of at
7 least some of the basic aims and purposes of the unlawful
8 agreement and with the intent to help it succeed.

9 Each defendant's knowledge is a matter of inference
10 from the facts proved. In that connection, I instruct you
11 that in order to become a member of a conspiracy, a defendant
12 need not have known the identities of each and every other
13 member, nor need the defendant have been told of all of their
14 activities.

15 Moreover, the defendant need not have been fully
16 informed of all of the details or the scope of the conspiracy
17 in order to justify an inference of knowledge on his part.

18 This is page 70 that you say you don't have.

19 Furthermore, a defendant need not have joined in all
20 of the conspiracy's unlawful objectives. Thus, a conspirator
21 need may not be proven to have known all the details of the
22 broader conspiracy. There need only be some evidence from
23 which it can be reasonably inferred that the defendant knew of
24 the existence of the scheme and knowingly joined and
25 participated in it.

1 The extent of each defendant's participation has no
2 bearing on the issue of that defendant's guilt.

3 A conspirator's liability is not measured by the
4 extent or duration of his or her participation. Indeed, each
5 member may perform separate and distinct acts and may perform
6 them at different times. Some conspirators may play major
7 roles while other play minor parts in the scheme.

8 An equal role is not what the law requires. In
9 fact, even a single act may be sufficient to draw a defendant
10 within the ambit of the conspiracy.

11 Moreover, it is not required that a person be a
12 member of the conspiracy from its very start to be a
13 coconspirator. The defendant may have joined at any point
14 during its progress.

15 I want to caution you, however, that a defendant's
16 mere presence at the scene of an alleged crime does not by
17 itself make him a member of the conspiracy.

18 Similarly, mere association with one or more members
19 of the conspiracy does not automatically make a defendant a
20 member. A person may know or be friendly with a criminal
21 without necessarily being a criminal himself.

22 Mere similarity of conduct or the fact that people
23 may have assembled together and discussed common aims and
24 interests does not necessarily establish proof of the
25 existence of a conspiracy.

1 I also want to caution you that mere knowledge or
2 acquiescence without participation in the unlawful plan is not
3 sufficient.

4 Moreover, the fact that the acts of a defendant
5 without knowledge merely happened to further the purpose or
6 objectives of the conspiracy does not make that defendant a
7 member. More is required under the law. What is necessary is
8 that a defendant must have participated with knowledge of at
9 least some of the purpose or objectives of the conspiracy and
10 with the intention of aiding and abetting the accomplishment
11 of those unlawful ends.

12 In sum, a defendant must have had an understanding
13 of the unlawful character of the conspiracy and must have
14 intentionally engaged, advised or assisted in it for the
15 purpose of furthering the illegal undertaking. He or she
16 thereby becomes a knowing and intentional participant in the
17 unlawful agreement. That is to say, a conspirator. In this
18 regard, it should be noted that frequently an apparently
19 innocent act sheds its harmless character if it is a step in
20 carrying out, promoting, aiding or assisting the
21 conspiratorial scheme.

22 To prove the defendant you are considering is guilty
23 with respect to count one and count three, it is enough that
24 the government prove beyond a reasonable doubt that the
25 defendant knowingly and intentionally joined a conspiracy to

1 provide material support to Al Qaeda and Hamas.

2 That is the whole charge but Augie will give you
3 page 70 to include in the material that you have.

4 (Jury out at 3:00 p.m.)

5 THE COURT: Let the record reflect that this was
6 read to the jury and the two alternates.

7 MR. GOODMAN: Yes.

8 (Recess while jury deliberating.)

9 (Continued on next page.)

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1 (Time noted: 5:05 p.m.)

2 (Jury enters the courtroom at 5:05 p.m.)

3 THE COURT: I am not going to ask you to sit down.

4 You can leave and I will see you at 9:00 tomorrow morning.

5 You can't discuss the case until everybody is there.

6 Don't discuss the case until everybody is present.

7 All right, have a good night.

8 (Whereupon the jury leaves the courtroom.)

9 THE COURT: What I would advise you to do is this.

10 After the complaints that both of you have, let me
11 know after you go over the transcript prepared by Anthony
12 Frisolone. I will see Gene Rudolph, the Chief Court Reporter,
13 on this.

14 MR. MARKS: Okay.

15 Judge, it is the worst transcript that I have ever
16 seen.

17 MR. GOODMAN: It is pretty bad.

18 He mixes up the defendants at one point. At one
19 point one defendant is mentioned and the transcript says the
20 other defendant.

21 MS. MOORE: I think it was his first day on the job,
22 Judge. He is brand new. It is a lot of Arabic names.

23 THE COURT: See if you can get a transcript
24 together, and we will send it back to him for corrections. We
25 will send a copy to the Chief Court Reporter.

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MS. MOORE: Thank you, Your Honor.

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MS. CHEN: Thank you, Your Honor.

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MR. MARKS: Thank you, Your Honor.

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MR. GOODMAN: Thank you, Your Honor.

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(Whereupon the matter was adjourned.)

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U.S.A. v. AL-MOAYAD AND ZAYED

2617

I N D E X

WITNESSES:

PAGES:

None

E X H I B I T S

NUMBER

DESCRIPTION

PAGE

Jury Note

U.S.A. v. AL-MOAYAD AND ZAYED

1

0	advised [1] - 2613:14 ago [1] - 2611:2 agreement [3] - 2611:4, 2611:8, 2613:17 Aided [1] - 2606:8 aiding [2] - 2613:10, 2613:20 aims [2] - 2611:7, 2612:23 Al [4] - 2605:6, 2605:19, 2607:4, 2614:1 Almoayad [3] - 2605:6, 2605:19, 2607:4 All [3] - 2605:6, 2605:19, 2607:3 alleged [1] - 2612:16 alternates [1] - 2614:6 ambit [1] - 2612:10 America [1] - 2605:3 Anthony [1] - 2615:11 Appearances [1] - 2605:13 Arabic [1] - 2615:22 assembled [1] - 2612:23 Assistant [1] - 2605:17 assisted [1] - 2613:14 assisting [1] - 2613:20 association [1] - 2612:18 Attorney [2] - 2605:14, 2605:17 Augie [1] - 2614:2 automatically [1] - 2612:19 awareness [1] - 2611:6	Computer [1] - 2606:8 conduct [1] - 2612:22 connection [1] - 2611:10 consider [2] - 2610:13, 2610:24 considering [4] - 2610:6, 2610:23, 2611:6, 2613:22 conspiracy [24] - 2609:2, 2609:6, 2610:2, 2610:6, 2610:8, 2610:9, 2610:11, 2610:13, 2610:14, 2610:19, 2611:1, 2611:6, 2611:11, 2611:16, 2611:22, 2612:10, 2612:12, 2612:17, 2612:19, 2612:25, 2613:6, 2613:9, 2613:13, 2613:25 conspiracy's [1] - 2611:20 conspirator [3] - 2611:3, 2611:20, 2613:17 conspirator's [1] - 2612:3 conspiratorial [1] - 2613:21 conspirators [1] - 2612:6 continued [1] - 2607:11 Continued [1] - 2614:9 copy [1] - 2615:25 corrections [1] - 2615:24 count [2] - 2613:23 couple [1] - 2608:5 Court [24] - 2605:1, 2606:3, 2606:3, 2607:2, 2607:5, 2608:1, 2608:4, 2608:6, 2608:11, 2608:17, 2608:21, 2609:2, 2609:5, 2609:8, 2609:11, 2609:15, 2609:21, 2614:5, 2615:3, 2615:9, 2615:12, 2615:23, 2615:25 Courthouse [1] - 2605:4 courtroom [4] - 2609:16, 2615:2, 2615:8 Cr [1] - 2605:3 crime [1] - 2612:16 criminal [2] - 2612:20, 2612:21
1		
10 [3] - 2608:11, 2608:14, 2608:19 11 [3] - 2608:11, 2608:15, 2608:20 11201 [2] - 2605:15, 2606:4 11:55 [1] - 2607:1 12 [2] - 2608:22, 2609:21		
2		
2005 [1] - 2605:8 225 [1] - 2606:4 2:50 [1] - 2609:14		
3		
3:00 [1] - 2614:4		
5		
5:05 [2] - 2615:1, 2615:2		
6		
68 [3] - 2609:7, 2609:8, 2610:3		
7		
7 [1] - 2605:8 70 [9] - 2608:22, 2608:24, 2609:3, 2609:4, 2609:22, 2609:25, 2610:1, 2611:18, 2614:3 72 [3] - 2609:7, 2609:8, 2610:3 7th [1] - 2608:7		
8		
8 [2] - 2607:5, 2608:6		
9		
9 [1] - 2608:6 9:00 [1] - 2615:4 9:30 [1] - 2605:8		
A		
abetting [1] - 2613:10 abundance [1] - 2610:1 accomplishment [1] - 2613:10 acquiescence [1] - 2613:2 act [2] - 2612:9, 2613:19 activities [1] - 2611:14 acts [2] - 2612:5, 2613:4 adjourned [1] - 2616:5 advise [1] - 2615:9	bad [1] - 2615:17 basic [1] - 2611:7 bearing [1] - 2612:2 became [1] - 2610:7 become [1] - 2611:11 becomes [1] - 2613:16 beyond [2] - 2610:4, 2613:24 bit [1] - 2609:3 brand [1] - 2615:22 broader [1] - 2611:22 Brooklyn [3] - 2605:5, 2605:15, 2606:4 business [1] - 2610:17	
	B	
	Cadman [1] - 2606:4 carrying [1] - 2613:20 case [2] - 2615:5, 2615:6 caution [3] - 2610:2, 2612:15, 2613:1 character [2] - 2613:13, 2613:19 charge [3] - 2609:2, 2610:2, 2614:2 charged [2] - 2610:9, 2611:1 Chen [2] - 2605:16, 2616:2 Chief [2] - 2615:12, 2615:25 Clerk [2] - 2608:13, 2608:15 coconspirator [1] - 2612:13 common [1] - 2612:23 complaints [1] - 2615:10	
	C	
		D
		dated [1] - 2608:7 deciding [1] - 2610:12 deemed [1] - 2610:19 Defendant [2] - 2605:19, 2606:1 defendant [24] - 2610:6, 2610:12, 2610:14, 2610:19, 2610:23, 2610:25, 2611:2, 2611:5, 2611:11, 2611:13, 2611:15, 2611:19, 2611:23, 2612:9, 2612:13, 2612:19, 2613:4, 2613:6, 2613:8, 2613:12, 2613:22, 2613:25, 2615:19, 2615:20 defendant's [4] - 2611:9, 2612:1, 2612:2, 2612:15 Defendants [1] - 2605:7 defendants [1] - 2615:18 defense [2] - 2607:7, 2608:10 deliberating [1] - 2614:8 Description [1] - 2617:9 details [2] - 2611:16, 2611:21 determining [1] - 2610:25

U.S.A. v. AL-MOAYAD AND ZAYED

2

different [3] - 2609:15, 2609:16, 2612:6 discuss [2] - 2615:5, 2615:6 discussed [1] - 2612:23 distinct [1] - 2612:5 District [3] - 2605:1, 2605:1, 2605:11 doubt [2] - 2610:5, 2613:24 down [1] - 2615:3 draw [1] - 2612:9 duration [1] - 2612:4 during [1] - 2612:14	government [2] - 2610:4, 2613:24 Government [1] - 2605:14 guilt [1] - 2612:2 guilty [1] - 2613:22	2609:23, 2614:6, 2614:8, 2615:8 justify [1] - 2611:17
E	H	K
East [1] - 2606:4 Eastern [1] - 2605:1 element [1] - 2610:4 ends [1] - 2613:11 engaged [1] - 2613:14 enters [1] - 2615:2 entire [2] - 2609:6, 2609:7 equal [1] - 2612:8 Esquire [7] - 2605:14, 2605:16, 2605:16, 2605:17, 2605:19, 2605:20, 2606:1 essential [1] - 2610:22 establish [2] - 2610:5, 2612:24 evidence [1] - 2611:22 Exhibit [5] - 2607:5, 2608:6, 2608:11, 2608:22, 2609:21 existed [1] - 2610:10 existence [2] - 2611:24, 2612:25 expert [2] - 2607:6, 2608:8 extent [2] - 2612:1, 2612:4	Hamas [1] - 2614:1 hard [1] - 2609:19 harmless [1] - 2613:19 Hassan [1] - 2607:4 help [1] - 2611:8 Henkel [4] - 2607:7, 2608:9, 2608:16, 2608:20 himself [1] - 2612:21 Honor [6] - 2608:3, 2609:1, 2616:1, 2616:2, 2616:3, 2616:4 Honorable [1] - 2605:10 Howard [1] - 2605:19	Kelly [1] - 2605:16 key [1] - 2611:5 knowing [1] - 2613:16 knowingly [5] - 2610:7, 2610:14, 2611:4, 2611:24, 2613:25 knowledge [6] - 2610:15, 2611:9, 2611:17, 2613:1, 2613:5, 2613:8 known [2] - 2611:12, 2611:21 Knox [1] - 2605:17
F	I	L
fact [4] - 2610:12, 2612:9, 2612:22, 2613:4 factor [1] - 2610:24 facts [1] - 2611:10 financial [1] - 2610:21 first [3] - 2608:13, 2611:3, 2615:21 follows [2] - 2608:22, 2609:22 Foreperson [3] - 2607:9, 2608:10, 2609:24 frequently [1] - 2613:18 friendly [1] - 2612:20 Frisolone [1] - 2615:12 full [2] - 2607:6, 2608:8 fully [1] - 2611:15 furthering [2] - 2610:16, 2613:15 Furthermore [1] - 2611:19	identities [1] - 2611:12 illegal [1] - 2613:15 include [1] - 2614:3 Indeed [1] - 2612:4 indictment [1] - 2611:1 inference [2] - 2611:9, 2611:17 inferred [1] - 2611:23 informed [1] - 2611:16 innocent [1] - 2613:19 instruct [1] - 2611:10 instructed [1] - 2610:21 instruction [2] - 2609:5, 2609:6 intent [1] - 2611:8 intention [2] - 2610:16, 2613:10 intentional [1] - 2613:16 intentionally [4] - 2610:7, 2610:14, 2613:14, 2613:25 interest [2] - 2610:22, 2610:24 interests [1] - 2612:24 isolating [1] - 2609:3 issue [1] - 2612:2 itself [1] - 2612:17	law [2] - 2612:8, 2613:7 lawyers [1] - 2609:18 least [2] - 2611:7, 2613:9 leave [1] - 2615:4 leaves [1] - 2615:8 Levitt [4] - 2607:7, 2608:9, 2608:14, 2608:19 liability [1] - 2612:3
G	J	M
Gene [1] - 2615:12 Goodman [9] - 2605:20, 2608:1, 2608:3, 2609:1, 2609:9, 2609:13, 2614:7, 2615:17, 2616:4	Jacobs [1] - 2605:19 Jeffrey [1] - 2605:17 job [1] - 2615:21 Johnson [1] - 2605:10 joined [7] - 2610:14, 2611:4, 2611:6, 2611:19, 2611:24, 2612:13, 2613:25 Jonathan [1] - 2606:1 Jr [1] - 2605:10 judge [2] - 2608:23, 2609:23 Judge [3] - 2605:11, 2615:15, 2615:22 Jury [4] - 2609:14, 2614:4, 2615:2, 2617:10 jury [7] - 2605:11, 2608:23, 2608:24,	major [1] - 2612:6 March [2] - 2605:8, 2608:7 marked [3] - 2607:5, 2608:21, 2609:21 Marks [4] - 2606:1, 2608:14, 2615:14, 2616:3 material [2] - 2614:1, 2614:3 matter [2] - 2611:9, 2616:5 Matter [1] - 2607:11 Mauskopf [1] - 2605:14 meant [1] - 2609:9 measured [1] - 2612:3 member [10] - 2610:8, 2610:13, 2610:25, 2611:11, 2611:13, 2612:5, 2612:12, 2612:17, 2612:20, 2613:7 members [2] - 2610:10, 2612:18 mentioned [2] - 2611:2, 2615:19 mere [3] - 2612:16, 2612:18, 2613:1 Mere [1] - 2612:22 merely [1] - 2613:5 minor [1] - 2612:7 Minutes [1] - 2606:7 mixes [1] - 2615:18 moayad [3] - 2605:6, 2605:19, 2607:4 Mohammed [5] - 2605:6, 2605:6, 2605:19, 2606:1, 2607:3 Mohsen [2] - 2605:6, 2606:1 moments [1] - 2611:2 money's [1] - 2609:18 Moore [5] - 2605:16, 2609:7, 2609:10, 2615:21, 2616:1 Moreover [3] - 2611:15, 2612:11, 2613:4

U.S.A. v. AL-MOAYAD AND ZAYED

3

<p>morning [1] - 2615:4 must [7] - 2610:4, 2610:10, 2610:19, 2611:3, 2613:8, 2613:12, 2613:13</p>	<p>play [2] - 2612:6, 2612:7 Plaza [2] - 2605:15, 2606:4 Pm [4] - 2609:14, 2614:4, 2615:1, 2615:2 point [3] - 2612:13, 2615:18, 2615:19 prepared [1] - 2615:11 presence [1] - 2612:16 present [1] - 2615:6 pretty [1] - 2615:17 Produced [1] - 2606:7 progress [1] - 2612:14 promoting [1] - 2613:20 proof [2] - 2610:21, 2612:24 properly [1] - 2610:24 prosecution [2] - 2607:7, 2608:9 prove [3] - 2610:4, 2613:22, 2613:24 proved [1] - 2611:10 proven [1] - 2611:21 provide [1] - 2614:1 purpose [4] - 2610:16, 2613:5, 2613:9, 2613:15 purposes [1] - 2611:7</p>	<p>S</p> <p>satisfied [1] - 2610:9 scene [1] - 2612:16 scheme [4] - 2610:22, 2611:24, 2612:7, 2613:21 scope [1] - 2611:16 seated [1] - 2609:15 second [2] - 2608:15, 2610:4 see [2] - 2615:4, 2615:12 See [1] - 2615:23 send [2] - 2615:24, 2615:25 sent [1] - 2608:18 separate [1] - 2612:5 sheds [1] - 2613:19 similarity [1] - 2612:22 Similarly [1] - 2612:18 single [1] - 2612:9 sit [1] - 2615:3 specific [1] - 2610:16 stake [1] - 2610:20 start [1] - 2612:12 States [4] - 2605:1, 2605:3, 2605:11, 2605:14 Stenographically [1] - 2606:7 step [1] - 2613:19 Sterling [1] - 2605:10 succeed [1] - 2611:8 sufficient [2] - 2612:9, 2613:3 sum [1] - 2613:12 support [1] - 2614:1</p>
<p>N</p> <p>names [1] - 2615:22 necessarily [2] - 2612:21, 2612:24 necessary [2] - 2609:11, 2613:7 need [6] - 2611:12, 2611:13, 2611:15, 2611:19, 2611:21, 2611:22 new [1] - 2615:22 New [4] - 2605:1, 2605:5, 2605:15, 2606:4 next [3] - 2607:11, 2610:10, 2614:9 night [1] - 2615:7 None [1] - 2617:4 note [2] - 2607:3, 2609:20 Note [1] - 2617:10 noted [3] - 2607:1, 2613:18, 2615:1 notes [1] - 2608:5 Number [2] - 2607:5, 2617:9</p>	<p>O</p> <p>objection [1] - 2609:10 objectives [4] - 2610:17, 2611:20, 2613:6, 2613:9 offense [1] - 2610:5 Official [1] - 2606:3 one [12] - 2608:13, 2608:15, 2608:21, 2608:23, 2609:3, 2609:7, 2609:23, 2612:18, 2613:23, 2615:18, 2615:19 One [1] - 2605:15 order [4] - 2610:5, 2610:18, 2611:11, 2611:17 outcome [2] - 2610:20, 2610:22</p>	<p>Q</p> <p>Qaeda [1] - 2614:1</p>
<p>P</p> <p>page [11] - 2607:11, 2608:22, 2608:24, 2609:3, 2609:4, 2609:7, 2609:22, 2610:3, 2611:18, 2614:3, 2614:9 Page [1] - 2617:9 Pages [1] - 2617:3 pages [2] - 2608:23, 2609:23 Pamela [1] - 2605:16 part [1] - 2611:17 participant [3] - 2610:7, 2610:19, 2613:16 participate [1] - 2610:15 participated [2] - 2611:25, 2613:8 participation [3] - 2612:1, 2612:4, 2613:2 parts [1] - 2612:7 people [1] - 2612:22 perform [2] - 2612:5 person [2] - 2612:11, 2612:20 Pierrepont [1] - 2605:15 plan [2] - 2611:4, 2613:2</p>	<p>R</p> <p>rather [1] - 2609:3 read [10] - 2608:5, 2608:7, 2608:23, 2608:24, 2609:2, 2609:5, 2609:6, 2609:23, 2610:2, 2614:6 reading [2] - 2608:24, 2609:25 reads [2] - 2608:22, 2609:22 really [1] - 2608:6 reasonable [2] - 2610:5, 2613:24 reasonably [1] - 2611:23 received [4] - 2607:3, 2608:5, 2608:21, 2609:20 Recess [2] - 2607:10, 2614:8 record [5] - 2607:2, 2608:4, 2608:5, 2609:20, 2614:5 reflect [4] - 2607:2, 2608:4, 2609:20, 2614:5 regard [3] - 2609:1, 2610:18, 2613:18 Reporter [4] - 2606:3, 2606:3, 2615:12, 2615:25 required [2] - 2612:11, 2613:7 requires [1] - 2612:8 respect [1] - 2613:23 Rm [1] - 2606:3 role [1] - 2612:8 roles [1] - 2612:7 Ronald [1] - 2606:3 Roslynn [1] - 2605:14 Rudolph [1] - 2615:12</p>	<p>T</p> <p>terrorism [2] - 2607:7, 2608:9 testimony [3] - 2607:6, 2608:8, 2609:4 thereby [1] - 2613:16 therefore [1] - 2611:5 three [1] - 2613:23 together [2] - 2612:23, 2615:24 Tolkin [1] - 2606:3 tomorrow [1] - 2615:4 Transcript [1] - 2606:7 transcript [5] - 2608:15, 2615:11, 2615:15, 2615:19, 2615:23 Transcription [1] - 2606:8 transcripts [4] - 2608:11, 2608:12, 2608:18 trial [1] - 2609:17 two [1] - 2614:6</p>
		<p>U</p> <p>under [1] - 2613:7 undertaking [1] - 2613:15 United [4] - 2605:1, 2605:3, 2605:11, 2605:14 unlawful [8] - 2610:15, 2611:4, 2611:7, 2611:20, 2613:2, 2613:11,</p>

2613:13, 2613:17

up [1] - 2615:18

Usa[1] - 2607:3

V

venture [1] - 2610:20

versus [1] - 2607:3

voluntarily [1] - 2610:7

W

whole [2] - 2610:2, 2614:2

William[1] - 2605:20

witnesses [2] - 2607:6, 2608:9

Witnesses[1] - 2617:3

worst [1] - 2615:15

worth [1] - 2609:18

Y

York[4] - 2605:1, 2605:5, 2605:15,
2606:4

yourself [1] - 2610:10

Z

Zayed[2] - 2605:6, 2606:1